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ORIGINAL

Federal Communications Commission

DA 93-685

Before the
Federal Communications Commission
Washington, D.C. 20554

FCC MAIL SECTION

However, if no applications are filed, we will delete Channel 239A at Sterling and no substitute allotment will be made to the community.

3. In view of the above, the Commission believes it is in the public interest to propose amending the FM Table of Allotments, Section 73.202(b) of the Commission's Rules with respect to the following communities:

MM Docket No. 93-171

DISPATCHED BY

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Lindsborg and Sterling,
Kansas)

RM-8257

City	Present	Proposed
Lindsborg, Kansas	240A	238C3
Sterling, Kansas	239A	234A

OPTION I

Channel No.

OPTION II

Lindsborg, Kansas	240A	238C3
Sterling, Kansas	239A	---

NOTICE OF PROPOSED RULE MAKING

Adopted: June 9, 1993;

Released: June 25, 1993

Comment Date: August 16, 1993

Reply Comment Date: August 31, 1993

By the Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed by E. Jerry Davies and Diane Davies d/b/a JD Communications ("petitioner"), requesting the substitution of Channel 238C3 for Channel 240A at Lindsborg, Kansas.¹ Petitioner also requests modification of the license for Station KQNS-FM, Channel 240A, to specify operation on Channel 238C3. Petitioner submitted information in support of the proposal and expressed an intention to apply for the channel, if allotted.

2. We believe petitioner's proposal warrants consideration because the proposed substitution would provide Lindsborg and the surrounding area with expanded service. Channel 238C3 can be allotted to Lindsborg, Kansas, in compliance with the Commission's spacing requirements provided a channel substitution is made at Sterling, Kansas.² Channel 239A was allotted to Sterling, Kansas in MM Docket 91-160.³ See 6 FCC Rcd 5368 (1991). The channel is vacant with no applications on file. Petitioner has proposed the substitution of channel 234A for Channel 239A at Sterling. A staff engineering analysis indicates that Channel 234A can be allotted to Sterling in compliance with the spacing requirements without a site restriction.⁴ If applications are filed for Channel 239A at Sterling during the comment period in this proceeding, the applicants will retain cut-off protection and will be permitted to specify the new class A channel, since the channels are equivalent.

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **August 16, 1993**, and reply comments on or before **August 31, 1993**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, as follows:

E. Jerry Davies and Diane Davies
d/b/a DJ Communications
P.O. Box 1069
McPherson, Kansas 67460

6. In addition, the Secretary shall send a copy of this *Notice of Proposed Rule Making* by Certified Mail, Return Receipt Requested, as follows:

Smoky Hill Broadcasting Co., Inc.
203 South Santa Fe
Salina, KS 67402

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's

¹ An application (File No. BALH-920817HO) for assignment of license from Smoky Hill Broadcasting Co., Inc. to E. Jerry Davies and Diane Davies was granted on October 5, 1992. Commission records do not show that the assignment transaction was consummated by the parties. This proceeding will not be terminated until the Commission receives notice that the transaction has been consummated, or that the current licensee, Smoky Hill Broadcasting Co., Inc., will apply for the upgrade.

We will serve the licensee with a copy of this *Notice*.

² The coordinates for Channel 238C3 at Lindsborg are 38-40-00 and 97-41-30.

³ A filing window for Channel 239A at Sterling was opened on October 29, 1991, and closed on November 28, 1991.

⁴ The coordinates for Channel 234A at Sterling are 38-12-42 and 98-12-12.

Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in

reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.